

August 7, 2003

The Honorable Marianne Lamont Horinko
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Horinko:

I am writing to express serious concerns about the findings of a report issued by the National and Florida Wildlife Federations (WF) and the Council of Civic Associations, Inc., (CCA) of Estero, Florida, concluding that the Federal government is contributing to the creation of a potentially significant and costly problem in the Florida Everglades ecosystem, specifically in Southwest Florida. The report, *Road to Ruin: How the U.S. Government is Permitting the Destruction of the Western Everglades* ("Road to Ruin"), criticizes three Federal agencies¹ for failing to protect adequately the habitat and water resources of Florida's Lee and Collier Counties. Asserting that "[t]he same kind of misguided development that decimated the Eastern Everglades and left American taxpayers with an \$8 billion restoration bill is happening again in the Western Everglades,"² the report faults the U.S. Army Corps of Engineers (Corps) for administering a lax Clean Water Act (CWA) permitting program (Section 404) which is "effectively draining and filling the wetlands of the Western Everglades"³ and the U.S. Environmental Protection Agency (EPA) for failing to insure full compliance with the Clean Water Act.

The Western Everglades are a valuable national resource where the Federal government invests in the area's national refuges, preserves, and estaurine research reserves.⁴ *Road to Ruin* documents

¹ The three agencies are the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS).

² National Wildlife Federation, Florida Wildlife Federation, and Council of Civic Associations, Inc., *Road to Ruin: How the U.S. Government is Permitting the Destruction of the Western Everglades*, November, 2002, at 1.

³ *Id.*

⁴ The major features of the area include, the Florida Panther National Wildlife Refuge, the Ten Thousand Islands National Wildlife Refuge, the Big Cypress National Preserve, the Fakahatchee Strand State Preserve, the Corkscrew Regional Ecosystem Watershed, the Rookery Bay and Estero Bay Aquatic Preserves, the Corkscrew Swamp Sanctuary, and the Picayune Strand State Forest. U. S. Army Corps of Engineers, Jacksonville District, *Environmental Impact Statement on Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties, Florida*, July 2000, Sec. 3.1 (hereinafter "2000 EIS").

citizens' concerns regarding losses of watershed and wetland function, of critical habitat for threatened and endangered species, and of clean water. Not only are there concerns about water quality in coastal areas, but the groundwater which supplies water to urban areas is affected by the failure to preserve the area's natural vegetation. *Road to Ruin* concludes:

At stake is the very heart of the Western Everglades Ecosystem: its clean water, cypress domes, seagrasses, wading birds, sport and commercial fisheries, and endangered species, including the Florida panther, the wood stork, and the manatee.⁵

The report sounds a caution against repeating past mistakes, noting the extraordinary high cost of undoing damage once it is done.⁶

As Ranking Member of the Committee on Governmental Affairs, whose mandate includes the study or investigation of "the efficiency and economy of operations of all branches of Government with particular reference to the operations and management of Federal regulatory policies and programs,"⁷ I am extremely troubled by the assertions that the Corps of Engineers and the EPA have failed to fulfill their statutory mandates, thereby endangering a valuable national resource as well as threatening the future of many of our nation's other precious resources. Because of EPA's responsibility for oversight of the Section 404 program and of state water quality programs, I have questions regarding the exercise of these responsibilities by the EPA.

Enclosed is a copy of the report, along with a letter to the Corps of Engineers which briefly summarizes the findings contained in *Road to Ruin*. These include failures by the Corps in considering the cumulative impacts of permitting decisions; in complying with existing regulatory prohibitions; and in protecting wetlands identified as "mitigation" for losses of other wetlands. The report also discusses the harm to Southwest Florida's watersheds and historic flowways. For example, despite the Corps' identification of the importance of maintaining and restoring flowways⁸ to reduce the harmful impacts of area dredge and fill projects, the report states that the Corps has continued to approve projects that "will further destroy historic flowways, rather than restore them."⁹ *Road to Ruin* further asserts that the Corps' practice of issuing Section 404 permits without assessing water quality impacts contributes to the degradation of water bodies which already do not meet federally-mandated water quality standards, including the Estero Bay and its tributaries and the Cocohatchee. The Corps' Jacksonville District relies on state water quality certifications which in turn are based on the assumption that projects with conventional stormwater management systems will meet water quality standards.

⁵ *Road to Ruin*, at Forward.

⁶ *Id.*

⁷ S. Res. 66, 108th Cong., 1st Sess. (2003)(Enacted).

⁸ Flowways are wetland watercourses that guide freshwater toward the Gulf Coast, store floodwater, supply water at times of low flow, filter pollutants, and support biologically diverse flora and fauna.

⁹ *Road to Ruin*, at 8.

The Corps of Engineers is responsible for the issuance of permits under the Clean Water Act to dispose of dredged or fill materials into the waters of the United States, but the EPA retains oversight responsibility with authority to veto the issuance of such permits. Where delegated to do so, the states carry out the day-to-day activities of implementation and enforcement of the Clean Water Act provisions that relate to pollution abatement, including the issuance of pollution discharge permits. However, the law provides that EPA retains the right to review and disapprove the issuance of permits.¹⁰ If necessary, it can also withdraw a state's authority to implement the Clean Water Act.¹¹

Road to Ruin criticizes EPA for failures in overseeing both the permitting decisions made by the Corps of Engineers and the administration of the water quality program by the state. The report states:

EPA has recently heightened its review of Southwest Florida projects by urging the Corps to impose water quality-related permit conditions, including additional stormwater treatment and water quality compliance monitoring. However, EPA's Florida Office has not always stood firm in demanding stricter water quality permit conditions. Nor has EPA used its CWA authority to demand full DEP and SFWMD compliance with Clean Water Act-mandated water quality standards and total maximum daily load (TMDL) requirements for impaired water bodies.¹²

The practices described in the report are potentially costly for the health of our natural resources and the Federal investment in preserves and wildlife refuges in the area. They threaten further degradation of the quality of the nation's waters. Therefore, because of EPA's responsibility for overseeing these important programs, I am requesting your response to the findings in the report and your answers to the questions below.

1. What is your response to the report, including the specific criticism quoted in the above paragraph?
2. Is the Corps of Engineers ensuring adequate protection of the wetlands, flowways, and water quality in the study area of the *Environmental Impact Statement on Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties, Florida* ("EIS study area").¹³ If yes, please explain the basis of your conclusion. If not, what will you do about it?
3.
 - A. When did the "heightened" EPA review of Section 404 permits issued by the Corps of Engineers in the EIS study area begin? Is it continuing? Describe all steps that are part of the heightened review.
 - B. Describe specifically any changes made in Section 404 permits issued since the EPA

¹⁰ Section 402(d) of the Clean Water Act; 33 U.S.C. Sec. 1342(d).

¹¹ Section 402(c)(3); 33 U.S.C. Sec. 1342(c)(3).

¹² *Road to Ruin*, at 9.

¹³ U.S. Army Corps of Engineers, Jacksonville District, *Environmental Impact Statement on Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties, Florida*, July 2000.

heightened its review of projects. Be specific, identifying each permit that was affected, and how.

C. As noted, EPA has the authority to veto Section 404 permits.

(1) Since July 2000, has the EPA staff reviewing Corps' permits in the EIS study area recommended veto of any such permits to any EPA officials? If so, identify specifically the permit and to whom the recommendation was made.

(2) What corrective action did EPA take?

(3) Nationwide, how many Section 404 permits has EPA vetoed since July 2000?

4. EPA also has the authority to review pollution discharge permits issued by a state.

A. Does EPA review all of the discharge permits which are issued in the EIS study area? If not, how many of the total discharge permits issued in the area were reviewed during 2002 and to date in 2003?

B. Identify all discharge permits in the EIS study area to which EPA objected in accordance with Section 402(d) of the Clean Water Act during 2002 and to date in 2003.

I look forward to receiving your responses to these questions.

Sincerely yours,

Joseph I. Lieberman
Ranking Member

JIL:kjs

Enclosures:

Letter to The Honorable Les Brownlee

Road to Ruin: How the U.S. Government is Permitting the Destruction of the Western Everglades